

Message Text

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44

ACTION EA-10

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-03 H-01 INR-05 L-02

NSAE-00 NSC-05 PA-01 RSC-01 PRS-01 SP-02 SS-15

USIA-06 EB-07 COME-00 OMB-01 CIEP-01 CEA-01 TRSE-00

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E.O. 11652: N/A

TAGS: EGEN, PGOV, RP

SUBJECT: DEPT OF JUSTICE OPINIONS RE: PENSION FUNDS AND LAND
OWNERSHIP

1. ON WE NOV 74, HEADLINES OF TIMES-JOURNAL STATED
QUOTE GOVT BLOCKS US FIRMS ON LANDHOLDINGS. ,UNQUOTE
ARTICLE THEN GOES ON TO CITE TWO LEGAL OPINIONS BY
SECTY OF JUSTICE ABAD-SANTOS IN WHICH HE DETERMINES
THAT TRANSFERRING OF PRIVATE LAND OWNED BY MOBIL OIL
AND GETTY OIL TO INDIVIDUAL REAL ESTATE CORPORATION WHICH WOULD BE
60 PERCENT OWNED BY THEIR EMPLOYEE PENSION FUNDS
WERE NOT SUFFICIENT-DUE TO THE TERMS AND CONDITIONS IN THE TRUST
ARRANGEMENTS-TO AVOID THE CONSTITUTIONAL PROHIBITION CONCERNING
ALIENS OWNING PRIVATE LANDS. SIMILAR ARTICLES AND EDITORIALS
APPEARED IN THE OTHER MANILA NEWSPAPERS.

2. GETTY OIL, MOBIL OIL AND A THIRD FIRM, FRANKLIN
BAKER, HAD EACH CREATED SEPARATE REAL ESTATE CORPORA-
TIONS WHICH WOULD BE OWNED 60 PERCENT BY THEIR PENSION FUND
AND 40 PERCENT BY PARENT COMPANY. REAL ESTATE CORPORATION
WOULD THEN LEASE BACK THE LAND TO PARENT CORPORATION.
IN EACH CASE, SECTY OF JUSTICE DETERMINED, BY SEPARATE
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OPINIONS, THAT BECAUSE OF TERMS OF PENSION TRUST FUND

IN WHICH PARENT CORPORATION CONTINUED EFFECTIVE CONTROL THROUGH APPOINTMENT OF TRUSTEES, POWERS GIVEN TRUSTEES AND CERTAIN REVOCATION RIGHTS, ARRANGEMENTS PROPOSED WOULD NOT PROVIDE SUFFICIENT IRREVOCABLE RIGHTS OF OWNERSHIP OR CONTROL TO 60 PERCENT FILIPINO ENTITY TO AVOID THE CONSTITUTIONS PROHIBITION CONCERNING ALEIN OWNERSHIP OF REAL PROPERTY.

3. COMMENT: THE OPINIONS DO NOT APPEAR TO BE AN ACROSS-THE-BOARD REJECTION OF REAL ESTATE/PENSION FUND CONCEPT OF RESOLVING LAND OWNERSHIP/ACCESS QUESTION FOR US FIRMS BUT ONLY REJECTION OF PLANS THAT APPARENTLY LACK SUFFICIENT ARMS-LENGTH CRITERIA. BASED ON REASONS CONTAINED IN CITED OPINIONS, SEC OF JUSTICE WAS PRIMARILY CONCERNED WITH OVERWHELMING EVIDENCE OF NOMINAL PHIL OWNERS INABILITY TO EXERCISE REAL CONTROL OVER PROPERTY. EMB WILL BE DISCUSSING MATTER WITH OTHER US FIRMS WHICH ARE CONSIDERING SIMILAR CONCEPT OR WHICH HAVE RECEIVED SOME GOP AGENCY APPROVAL FOR THEIR PREVIOUSLY SUBMITTED PENSION/REAL ESTATE PLANS TO DETERMINE RAMIFICATIONS, IF ANY. ALSO WILL ATTEMPT TO DETERMINE WHAT FUTURE STEPS AFFECTED FIRMS PLAN TO TAKE IN THIS MATTER. WHILE ABAD SANTOS OPINIONS MAY HUE STRICTLY TO THE LEGAL/CONSTITUTIONAL REQUIREMENT, IF HEHEDED IT MAY AVOID FUTURE CHALLENGES OF SUCH ARRANGEMENTS. IT STILL APPEARS THAT AN APPROPRIATELY DRAFTED PLAN WOULD WORK TO MEET BOTH COMPANY GOALS OF NOT DIVESTING TOO MUCH CONTROL AND GOVERNMENT OBJECTIVE OF ON-THE-FACE CONSISTENCY WITH LAW. STRONG GOP ADVOCATES OF THIS APPROACH, FINSEC VIRATA AND INDUSTRY SEC PATERNO, NO DOUBT WILL BE AT SOME PAIN TO FIND A SUITABLE WAY OUT.

4. COPIES OF CITED DEPT. JUSTICE OPINIONS ON MOBIL OIL, GETTY OIL AND FRANKLIN BAKER BEING POUCHED.
SULLIVAN

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